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*Opinion*

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CONCORD, N.H.

Mr. Russell B. Tobey, Director  
Recreation Division  
Forestry and Recreation Commission  
State House Annex  
Concord, New Hampshire

Dear Mr. Tobey:

You have asked for our opinion as to whether lands within the Franconia Notch State Park may be appropriated for highway purposes without the approval of the Forestry and Recreation Commission. The answer to this question is to be determined by attempting to ascertain the intent of the Legislature in that regard.

The property comprising the Franconia Notch State Park was acquired by The State of New Hampshire under the provisions of Laws of 1925, chapter 101. Section 1 of that chapter provided in part as follows:

"The governor with the advice of the council is hereby empowered to acquire on behalf of the state by purchase, [certain lands in Franconia and Lincoln] as [they] may deem necessary for the preservation of the forests and scenery . . ."

Section 2 authorized the acquisition of such lands by condemnation in the event the Governor and Council determined that they could not be purchased at a reasonable price. Section 5 provided in part as follows:

"All property acquired under the provisions of this act shall be held by the state for the purpose of a forest reservation and state park . . ."

Mr. Russell B. Tobey, Director

-2-

The specific problem involved therefore is whether the above-quoted language of section 5 expresses a legislative intent that these lands shall not be appropriated for any purpose other than a forest reservation and state park without further legislative action.

Our answer is in the negative. RSA 203:1 and 2 grant to the Governor and Council broad powers to lay out Class I and Class II highways either by their own action or by a commission of three persons appointed by them for such purpose. The language of these two sections is broad enough to empower the Governor and Council, or the commission appointed by them, to lay out all or any portion of the highway over and across property owned by the State and then being used for other public purposes in the absence of an express legislative prohibition with regard to the particular property involved. Although section 5 of Laws 1925, chapter 101 expresses the general legislative purpose that property acquired under the provisions of that chapter shall be used for a forest reservation and state park, there is nowhere expressed in that chapter an intent to restrict the aforesaid broad powers of the Governor and Council with respect to the layout of Class I and Class II highways. The Legislature has demonstrated in other enactments that it knows how to express clearly its intent to prohibit the taking of public property for any purpose other than that for which it is presently being used, when such is their desire. See for example RSA 4:32 which expressly provides that all real estate acquired under the provisions of that chapter shall be held for the purpose for which it was acquired until otherwise ordered by the Legislature, and RSA 135:13, which forbids the taking of lands connected with the State Hospital for a highway or other public use, except by the express authority of the Legislature for that purpose. In the absence of any such clear expression of the legislative intent in Laws 1925, chapter 101, and further considering that the taking of a portion of the Franconia Notch State Park for a highway is not necessarily inconsistent with the use of the remainder thereof for a forest reservation and state park, we are unable to say that the powers of the Governor and Council, as set forth in RSA 203:1 and 2 are not broad enough to enable them to layout a highway through the Franconia Notch State Park.

Sincerely yours,

John J. Zimmerman  
Assistant Attorney General

JJZ/lt